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10/587,814	07/28/2006	Mark J Papania	6395-68278-03	5324
46135 7590 05/27/2010 KLARQUIST SPARKMAN, LLP 121 S.W. SALMON STREET SUITE 1600 PORTLAND, OR 97204				
EXAMINER SKORUPA, VALERIE LYNN				
ART UNIT		PAPER NUMBER		
3771				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/587,814

Applicant(s)

PAPANIA ET AL.

Examiner

VALERIE SKORUPA

Art Unit

3771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/GC/IB)
- Paper No(s)/Mail Date 12/26/06, 10/23/06, 7/28/06

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim recites "wherein the flexible diaphragm comprises a plurality of projections" in lines 1-2. It is not clear whether these projections are the same projections claimed in independent claim 1 or if applicant is attempting to claim additional projections.

Claim Rejections - 35 USC § 102

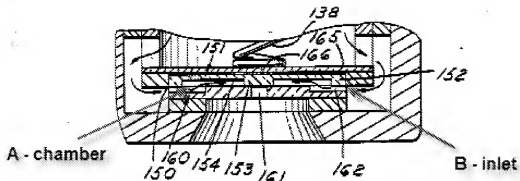
3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 7, 9, 11, 19, 24, 59, and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Giachino et al. (US Patent No. 4,647,013).
5. As to claim 1, Giachino discloses a removable aerosolizing element 130 (Fig. 11) comprising: a body 130 having an exterior surface and a chamber A (see illustrated Fig. 15 below) defined therein; an inlet B defined in the body for connection to a source of agent (contained in space 134, Fig. 11A), the inlet B in fluidic communication with the

chamber A; agent releasing orifices (while Fig. 15 shows only one orifice 161, Fig. 7 and Fig. 8 show multiple orifices 72/91 can be used in place of one orifice, col. 3, ln. 17-29) defined in the body 130 and in communication with the chamber A; a movable element 152 (Fig. 15, col. 5, ln. 3-12) having an inner surface that defines a portion of the chamber A, the movable element 152 being capable of moving in response to an external force (piezoelectric diaphragm 165 and spring element 138 can both be considered to be applying an external force) applied to the exterior surface to expel agent in the chamber A through the orifices 72; and projections (while Fig. 15 shows only one projection 153, Fig. 10 shows multiple projections 101 can be used in place of one projection when multiple orifices 72 are present, col. 3, ln. 38-43) disposed in the chamber A and maintaining a minimum spacing between the movable element 152 and the orifices 72, the projections 101 being configured to contact the inner surface of the movable element 152 and an opposing inner surface (upper surface of member 160) of the chamber A defining said orifices 72 to maintain the minimum spacing when the external force is applied to the exterior surface.



6. As to claim 2, Giachino discloses that the moveable element 152 is deformable under the external force (Fig. 15-15A, col. 5, ln. 3-12).
7. As to claim 3, Giachino discloses that the movable element 152 comprises a flexible diaphragm ("thinner membrane 154", col. 4, ln. 54-55).
8. As to claim 4, Giachino discloses an internal passageway portion 162 (Fig. 15) in communication with the inlet B and a main chamber portion 134 (Fig. 11A).
9. As to claim 7, Giachino discloses an orifice plate 71/160 (Fig. 7, Fig. 15)
10. As to claim 9, Giachino discloses the chamber A can be filled with agent via gravity feed from the inlet B (see Fig. 12-15).
11. As to claim 11, Giachino discloses that the projections 101 are dimensioned to contact the inner surface of the movable element 152 and the opposing inner surface of the chamber A when the external force is not applied to the movable element 152 (Fig. 15, Fig. 15A, col. 5, ln. 3-10).

12. As to claim 19, Giachino discloses an actuator 165 and that the body 130 prevents the agent from contacting the actuator 165 see Fig. 15 which shows the actuator 165 on the outside of the chamber A).
13. As to claim 24 and 59, Giachino discloses that the movable element 152 or flexible diaphragm 154 comprises the plurality of projections 101 (Fig. 10, Fig. 15).
14. As to claim 62, Giachino discloses that the projections 101 allow agent to flow through the chamber A when the projections 101 are in contact with the inner surface of the movable element 152 (Fig. 15 shows that agent is allowed to pass through either side of chamber A when the projections contact the opposing wall of the chamber A).

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 60 and 61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giachino.
17. As to claim 60, Giachino discloses the claimed invention including that the projections 101 have a height equal to the minimum spacing of the chamber A (see Fig. 15), but does not disclose that the height is about 0.1 mm. However, choosing the height of the projections is a matter of design consideration and it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify

the projections of Giachino to be about 0.1 mm in height in order to create a suitable sized chamber to hold fluid between the movable element and the orifice plate since it appears that Giachino's aerosolizing element would perform equally well with the projections being of the claimed height.

18. As to claim 61, Giachino discloses the claimed invention except that the orifices are formed by laser drilling. However, the method of which the orifices are formed is a matter of design consideration since it appears that the manner in which the orifices are formed is irrelevant to the performance of the device. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the orifices of Giachino by laser drilling in order to provide a suitable means to create orifices in the plate since it appears that Giachino's device would perform equally well if the orifices had been formed by laser drilling.

19. Claims 1, 3, 5-8, 10, 12, 16, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (US Patent No. 6,405,934) in view of Giachino.

20. As to claim 1, Hess ('934) discloses a removable aerosolizing element 1 (Fig. 1) comprising: a body 1 having an exterior surface and a chamber 2 defined therein; an inlet 4 (col. 4, ln. 24-29) defined in the body 1 for connection to a source of agent, the inlet 4 in fluidic communication with the chamber 2; agent releasing orifices 10 defined in the body 1 and in communication with the chamber 2; a movable element 6 having an inner surface that defines a portion of the chamber 2, the movable element 6 being capable of moving in response to an external force applied (applied by vibrating means 8) to the exterior surface to expel agent in the chamber 2 through the orifices 10 (col. 5,

ln. 53-58), but does not disclose projections disposed in the chamber and maintaining a minimum spacing between the movable element and the orifices, the projections being configured to contact the inner surface of the movable element and an opposing inner surface of the chamber defining said orifices to maintain the minimum spacing when external force is applied to the exterior surface. However, Giachino discloses projections within a chamber of an aerosolizing element, as discussed in claim 1 above. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the aerosolizing element of Hess ('934) to include projections which contact opposing surfaces of the chamber as taught by Giachino in order to prevent fluid from leaking through the orifices when the device is not activated.

21. As to claim 3, Hess ('934) discloses that the movable element 6 (Fig. 1) is a flexible diaphragm (col. 4, ln. 50-53).

22. As to claim 5 and 6, Hess ('934) discloses that the chamber 2 (Fig. 1) is filled with a predetermined quantity of agent (col. 4, ln. 33-36) and the inlet 4 is sealed by a cover ("valve", col. 4, ln. 22).

23. As to claim 7, Hess ('934) discloses an orifice plate 5 (Fig. 1) partially bounding the chamber 2 opposite the movable element 6, the orifice plate 5 defining the orifices 10 (see Fig. 1).

24. As to claim 8, Hess ('934) discloses that the orifice plate comprises a metal foil (col. 4, ln. 64-67).

25. As to claim 10, Hess ('934) discloses that the chamber can be filled via capillary action (col. 4, ln. 13-15).

26. As to claim 12, Hess ('934) discloses that the external force comprises vibratory oscillations (col. 5, ln. 53-58).
27. As to claim 16, Hess ('934) discloses that the element 1 is disposable after use (it appears that the element of Hess is capable of being disposed of after being used).
28. As to claim 25, Hess ('934) discloses that the body comprises an opening (indented region of the bottom of movable element 6 where actuator 8 (vibrating means) is located, Fig. 1).
29. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (US Patent No. 6,405,934) in view of Giachino, as applied to claim 1 above, and further in view of Gonda et al. (US Patent Publication 2002/0124852).
30. The modified element of Hess ('934) discloses the claimed invention except that the element is pre-filled with at least a first and second component of an agent that are mixed within the element prior to aerosolization and that the body comprises a first reservoir with a first component of the agent, a second reservoir with a second component of the agent and a separation element disposed between the first and second reservoirs and separating the first component from the second component, the separation element being movable into the first reservoir to allow mixing of the first and second components. However, Gonda teaches an aerosolizing element (Fig. 13) with a first reservoir 71 filled with a first component 76, a second reservoir 72 filled with a second component 75, and a separation element 73 between the first and second reservoirs separating the two components, wherein the separation element 73 is movable into the first reservoir (the increased pressure within the second reservoir 72

will cause the ruptured separation element 73 to move into the first reservoir 71) to allow mixing of the components prior to aerosolization (paragraph [0260], In. 1-21).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the element of Hess ('934) to include the first and second reservoirs and separation element as taught by Gonda to keep the first component separate from the second component until just prior to inhalation in order to increase the shelf life of the agent (paragraph [0261], In. 15-18).

31. Claims 1, 15, 17, 18, 20, 21, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papania et al. (WO 02/074372 A2) in view of Giachino.

32. As to claim 1, Papania discloses a removable aerosolizing element (Fig. 5C) comprising: a body 90 having an exterior surface and a chamber 112 defined therein; an inlet 38 defined in the body 90 for connection to a source of agent 24 (Fig. 3), the inlet 38 in fluidic communication with the chamber 112; agent releasing orifices 108 (Fig. 6) defined in the body 90 and in communication with the chamber 112; a movable element 110 having an inner surface that defines a portion of the chamber 112, the movable element 110 being capable of moving in response to an external force applied to the exterior surface to expel agent in the chamber 112 through the orifices 108 (pg. 18, In. 3-20), but does not disclose projections disposed in the chamber and maintaining a minimum spacing between the movable element and the orifices, the projections being configured to contact the inner surface of the movable element and an opposing inner surface of the chamber defining said orifices to maintain the minimum spacing when external force is applied to the exterior surface. However, Giachino discloses

projections within a chamber of an aerosolizing element, as discussed in claim 1 above. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the aerosolizing element of Papania to include projections which contact opposing surfaces of the chamber as taught by Giachino in order to prevent fluid from leaking through the orifices when the device is not activated.

33. As to claim 15, Papania discloses a needle portion 28 shaped to receive a vial 24 of agent, an end of the needle portion 28 defining the inlet 38 (Fig. 3, pg. 13, ln. 9-15),

34. As to claim 17, Papania discloses that one side of the body 90 (Fig. 3) is adapted for direct attachment to a patient interface 54 (pg. 14, ln. 18-26).

35. As to claim 18 and 20, Papania discloses an air vent or airflow passageway 92 separate from the inlet 38 (Fig. 5C, pg. 16, ln. 13-14).

36. As to claim 21, Papania discloses that the airflow passageway 92 (Fig. 5C) comprises an inlet 122 on one side of the body 90 and an outlet 146 in an opposing side, the outlet 146 being offset from the inlet 122 (see Fig. 5C

37. As to claim 63, Papania discloses an ultrasonic horn 200 (Fig. 10) coupled to the movable element 110 and comprising an actuator and a motion transmitting member coupling the actuator to the movable element for transferring vibratory motion of the actuator to the movable element 110 (pg. 20, ln. 3-8).

38. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papania et al. in view of Giachino, as applied to claim 1 above, and further in view of Everhart (US Patent No. 5,186,057).

39. The modified element of Papania discloses the claimed invention except that first and second surfaces positioned on opposing sides of the body are reflective and that the body comprises a transparent material. However, Everhart teaches first and second reflective surfaces of a body containing a liquid (col. 3, ln. 64-col. 4, ln. 10), wherein the body is a transparent material (col. 5, ln. 45-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the body of Papania to include the first and second reflective surfaces and transparent body material as taught by Everhart in order to allow light to pass through the body and be reflected to a detector for measuring a flow rate of the agent.

40. Claims 26-34, 37, 42-48, 51, and 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papania et al. (WO 02/074372).

41. As to claim 26, Papania discloses the claimed invention, as discussed in claim 1 above, including an aerosolizing device (Fig. 1-3) comprising: a housing 8 sized and shaped to be held in the hand of a user, a disposable aerosolizing element 90 (the aerosolizing element 90 is capable of being disposed by the user), an oscillator (pg. 9, ln. 19), and a patient interface 54 coupled to the housing 8, but does not disclose that the aerosolizing element is removable from the housing. However, Fig. 6 shows the element being a separate component from the rest of the device and it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the element removable in order to allow cleaning or replacing of parts, for example.

42. As to claim 27, Papania discloses a compressed air source 92 (Fig. 6, pg. 16, ln. 18-20).

43. As to claim 28, Papania discloses that some of the air conveyed by the compressed air source is directed to cool the oscillator (Fig. 6 shows the air path from source 92 through holes 146 and out through the top of the element 90. Therefore, it appears that the air would be directed past the oscillator to cool the oscillator).
44. As to claim 29, Papania discloses air inlet holes positioned to allow entry of atmospheric air into the device (pg. 17, ln. 29-30).
45. As to claim 30, Papania discloses an internal chamber 112 (Fig. 6) at least partially defined by a flexible portion 110 that can be manually squeezed by a user (pg. 12, ln. 21-27).
46. As to claim 31, Papania discloses an inlet 38 (Fig. 6).
47. As to claim 32 and 57, Papania discloses a body-mountable pack (Fig. 8B) and a power source comprising one or more batteries disposed in the pack (pg. 5, ln. 29-30).
48. As to claim 33, Papania discloses an air pump (pg. 16, ln. 18-24) and an air conduit 92 fluidly connecting the air pump to the housing 8
49. As to claim 34, Papania discloses that the pack is worn around the user's waist or on the user's shoulder (backpack frame 158, Fig. 8B, pg. 18, ln. 29)
50. As to claim 37, Papania discloses that the patient interface comprises a one-way valve 50 (Fig. 3pg. 14, ln. 27-30).
51. As to claim 42, Papania discloses the claimed invention, as discussed in claims 1 and 26 above, including a handheld aerosolizing device (Fig. 1-3) comprising a disposable aerosolizing element 90 and battery powered actuator (pg. 9, ln. 15-18, pg. 8, ln. 32-pg. 9, ln. 2), and a patient interface 54.

52. As to claim 43 and 44, Papania discloses a fluid passageway 112 (Fig. 6) from a source of agent 24 (Fig. 3) to the patient interface 54 is substantially contained within the aerosolizing element 90 and the element 90 is separately removable from the device (see Fig. 6)

53. As to claim 45-48, Papania discloses that the aerosolizing element is shaped for direct connection to the source of agent 24 (see Fig. 3), that the aerosolizing element is pre-filled with a volume of agent and the volume is sufficient for multiple single doses (see Fig. 6).

54. As to claim 51, Papania discloses a nasal prong 54 (Fig. 3, pg. 14, ln. 18-24).

55. As to claim 56, Papania discloses a housing 8 containing the aerosolizing element 90 and the oscillator (see Fig. 3).

56. As to claim 58, Papania discloses a method of using an aerosolizing device comprising administering an aerosolized agent from the aerosolizing device by applying vibratory oscillations to a disposable aerosolizing element in the aerosolizing device, but does not disclose disposing of the element after administering the agent. However, it is a well known practice to dispose of a product once a user is finished using it. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the method of Papania to include disposing of the element in order to replace the device with a newer one, for example.

57. Claims 35, 36, 49, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Papania et al., in view of Monson (US Patent No. 6,612,049).

58. Papania discloses that the patient interface is intended for disposal after use (pg. 14, ln. 23-24), but does not disclose that the patient interface is a mask that is porous to air. However, Monson discloses a porous mask 1 attached to an administering device (Fig. 1, col. 1, ln. 49-51). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Papania to include the porous mask as taught by Monson in order to provide a suitable means for administering agent to the nose and mouth of the patient while still allowing the patient to breath through the mask.

59. Claims 26, 42, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (US Patent No. 6,196,219).

60. As to claim 26, Hess ('219) discloses an aerosolizing device 1 (Fig. 1) comprising: a housing 2 sized and shaped to be held in the hand of a user, a disposable aerosolizing element 5 (the aerosolizing element 5 is capable of being disposed by the user, col. 4, ln. 16-20), an oscillator 10 (col. 6, ln. 23-27), and a patient interface 6 coupled to the housing 2, but does not disclose that the aerosolizing element is removable from the housing. However, Fig. 2 shows the element 5 being a separate component from the rest of the device and it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the element removable in order to allow cleaning or replacing of parts, for example.

61. As to claim 42, Hess (219') discloses the claimed invention, as discussed in claim 26 above, including a handheld aerosolizing device (Fig. 1) comprising a

disposable aerosolizing element 5, a battery powered actuator 10 (Fig. 2, col. 4, In 22-23), and a patient interface 6 (Fig. 1).

62. As to claim 40 and 52, Hess ('219) discloses an aerosolization rate monitor 19 (col. 10, In. 31-36)

63. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. (US Patent No. 6,196,219) in view of Bruna et al. (US Patent No. 5,447,151).

64. The modified device of Hess ('219) discloses the claimed invention except for a counting device. However, Bruna teaches a counting device used in an aerosolizing device (col. 12, In. 43-47). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Hess ('219) to include the counting device as taught by Bruna in order to provide information to the user of how much agent has been dispensed or is left.

65. Claims 53-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al. ('219), in view of Everhart (US Patent No. 5,186,057).

66. Hess ('219) discloses the claimed invention, as described in claims 22-23, except that the aerosolization rate monitor comprises a light source, a light detector, a controller, a visual indicator, and first and second opposing reflective surfaces on the aerosolizing element. However, Everhart teaches a flow rate monitor comprising a light source, a light detector, a controller, first and second reflective surfaces (col. 3, In. 61-col. 4, In. 10), and a visual indicator (col. 8, In. 68). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify

the aerosolization monitor of Hess ('219) to include the light source, detector, controller, first and second reflective surfaces and visual indicator as taught by Everhart in order to provide a suitable means for measuring the rate of flow of the agent and provide useful information to the user.

67. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Papania et al. in view of Gallem et al (US Patent Publication 2003/0205226).

68. Papania discloses the claimed invention except that the one way valve is a duckbill valve. However, Gallem teaches a one-way valve 152 (Fig. 5A-5B) that is a duckbill valve (paragraph [0019], ln. 1-4). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the valve of Papania to be a duck-bill valve as taught by Gallem in order to provide a suitable alternative type of valve to prevent exhalation air from entering the device through the mouthpiece.

69. Claim 39 is rejected under 35 U.S.C. 103(a) as being unpatentable over Papania et al. in view of Egilmex (US Patent No. 4,945,929).

70. Papania discloses the claimed invention except that the interface comprises one or more baffles. However, Egilmex teaches baffles in a patient interface of an aerosolizing device (col. 1, ln. 54-col. 2, ln. 6). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Papania to include the baffles as taught by Egilmex in order to create turbulent mixing of the aerosol.

Response to Arguments

71. Applicant's arguments, see pages 11-12 of the Remarks, filed February 12, 2010 with respect to the election/restriction requirement have been fully considered and are persuasive. The requirement for election of species of claims 1-63 has been withdrawn.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VALERIE SKORUPA whose telephone number is (571)270-1479. The examiner can normally be reached on Monday - Friday, 8:00 a.m. - 5:00 p.m., EST, alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571)272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/VALERIE SKORUPA/
Examiner, Art Unit 3771

/Justine R Yu/
Supervisory Patent Examiner, Art Unit 3771